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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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MARLA J. AILOR,  
*Complainant,*

v.

WESTFIELD WASHINGTON TOWNSHIP,  
*Respondent.*

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Formal Complaint No.  
18-FC-149

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Luke H. Britt  
Public Access Counselor

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This advisory opinion is in response to a formal complaint alleging the Westfield Washington Township Trustee and Advisory Board violated the Open Door Law.<sup>1</sup> Attorney Christine Crull Altman filed an answer to the complaint on behalf of the Township. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on December 28, 2018.

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<sup>1</sup> Ind. Code §§ 5-14-1.5-1 to -8

## **BACKGROUND**

This case involves a public access dispute between a constituent and the Westfield Washington Township Trustee and Board regarding sufficient public notice.

On or about December 12, 2018, the Township Board met to discuss a certified remonstrance of a bonding initiative. The Board voted to move forward with the project.

Marla J. Ailor (“Complainant”) alleges that notice was not properly given because the date, time, and location was not physically posted at the meeting location – the Washington Township Office. The Township did, however, post notice of the meeting on its website on the 10th, which was 48 hours in advance.

The Board held another meeting on December 20. Again, there was no physical notice and Ailor submits evidence that the township website was not updated until the day before the 8 a.m. meeting on the 20th.

Ailor also contends the notice was not sent to the local newspaper nor was it published.

In its response, the Township concedes the physical notice was not properly posted; the website was updated in a separate section than the Complainant asserts; and notice by publication was unnecessary.

Furthermore, the Township argues that Ailor and others opposed to the bond issuance appeared at the meeting on both occasions and, while the notice did not meet the technical specification of the law, enough notice was given to the public to be considered proper.

At its organization meeting on January 8, 2019, the township board voted to rescind bond process.

## **ANALYSIS**

### **1. The Open Door Law (ODL)**

It is the intent of the Open Door Law (“ODL”) that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

Westfield Washington Township is a public agency for purposes of the ODL; and thus, subject to the law’s requirements. Ind. Code § 5-14-1.5-2. The Township Advisory Board is a governing body of the township for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). As a result, unless an exception applies, all meetings of the Board must be open at all times to allow members of the public to observe and record.

#### **1.1 Public Notice**

As set forth above, Ailor argues the Township provided inadequate public notice for at least two public meetings of the board.

Under the ODL, the governing body of a public agency must give public notice of the date, time, and place of any meet-

ings, executive sessions, or of any rescheduled or reconvened meeting at least 48 hours—excluding weekends and legal holidays—before the meeting as follows:

The governing body of a public agency shall give public notice by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held.

Ind. Code § 5-14-1.5-5(b)(1). Ailor contends the Township provided defective notice because the notice was not posted at the principal office of the Township.

She is correct.

The plain language of the ODL mandates a public notice be physically present at the meeting location or principal office of the agency. While this Office can envision a day when website notice alone would be sufficient, the current status of the law requires otherwise.

While there is conflicting evidence as to when the Township actually put the notice on its website, further discussion is unwarranted as the notice statute under the Open Door Law does not contemplate online notice.

### **1.2 Notice by Publication**

Ailor also claims the notice is defective because the date, time, and location of the meeting was not published in the local newspapers. Publication is only required in certain circumstance contingent upon the nature and subject matter of a pending agenda. That procedure is governed, in part, by Indiana Code Section 5-3-1.

The subject matter of the December 10 and 20 meetings are not of the nature that required notice by publication in the local media.

### **1.3 Practical considerations**

The Open Door Law notice requirement is especially critical in the case of Township Board meetings as it is one of the few instances where the public has a statutory entitlement to be heard at a meeting.<sup>2</sup> Therefore, it is especially important that the notice requirement is followed to the letter of the law.

The Township appears to be cognizant of those requirements at least in their operating procedures. While physical notice is indeed somewhat antiquated as digital notice opportunities may be more effective, there is still a contingent of taxpayers that rely on the old-fashioned analog method to get their notice.

In any event, it does appear as if a portion of those who were interested in attending were able to do so, but that's not a reliable indicator that *everyone* who was interested in attending received notice. Governing bodies will often employ a "no harm, no foul" defense but that falls short in many instances of alleged Open Door Law non-compliance.

### **1.4 Judicial remedies**

It bears mentioning that the Open Door Law is not a toothless statute; there are remedies and consequences as violations give rise to causes of actions. Those remedies, how-

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<sup>2</sup> Ind. Code § 36-6-6-6.

ever, are rooted in practicality. A Complainant can file a lawsuit seeking such a remedy regardless of whether a formal complaint is pending before the Public Access Counselor.<sup>3</sup>

For example Indiana Code Section 5-14-1.5-7(a) establishes a cause of action and a number of remedies for violations of the ODL, but gives a trial court the discretion to judge the severity of the non-compliance based upon several factors. One of those remedies, for example, is the ability to force a board to walk back a vote. This appears to be moot, however, due to the Township already doing so.

Whether a trial court would issue a substantive order in this case is beyond the scope of any speculation with which I would be comfortable, but these considerations underscore the importance of compliance.

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<sup>3</sup> Ind. Code § 5-14-1.5-7(b)(2).

## **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Westfield Washington Township Advisory Board held at least two meetings under deficient notice.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Indiana Public Access Counselor